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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

Writ Petition No.1573 OF 2006

PETITIONER		M/s. C.N. Enterprises, a proprietorship firm through its Proprietor Shri Sohel Farista, s/o Late Shri Yusuf Ali Farista, Noorani Rice Mills, Mill Para, Durg Tehsil and District – Durg (Chhattisgarh)
		Versus
RESPONDENTS	1.	Dena Bank, Mohan Nagar Durg, Tehsil and District Durg (Chhattisgarh)
	2.	Shri Abdul Aziz Farishta, s/o late Yusuf Ali Farista, residing at Chamunda Niwas, House NO.308, Vidyut Nagar, (Chhattisgarh)
	3.	Smt. Amina B. Farista, w/o Late Yusuf Ali Farista, residing at Chamunda Niwas House No.308, Vidyut Nagar, Durg Tehsil and District Durg (Chhattisgarh)
	4.	The Debt Recovery Tribunal, Jabalpur (M.P.)
	5.	The Debt Recovery Appellate Tribunal, Allahabad (U.P.)

Present : Shri Sanjay K. Agrawal, learned counsel for the petitioner.

Shri P.S. Koshy, learned counsel for respondent No.1.

ORAL ORDER

(Passed on 10th August, 2006)

The Debt Recovery Tribunal, Jabalpur, in its discretion refused to entertain the application of the petitioner for cross-examination of the officers of the Bank, namely, Shri Ravi Bhushan Sharma and Shri Sylvester Toppo for establishing the plea taken by the petitioner that the debt is barred by time. When that order of the Tribunal was assailed before the Appellate Tribunal, the Appellate Tribunal also declined to exercise its discretion in favour of the petitioner. Hence, this writ petition under Articles 226/227 of the Constitution of India.

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(2) The main controversy between the parties relates to the question whether the petitioner has acknowledged the debt as claimed by the Bank's Management. In support of its plea, the Bank has produced Annexure-A/26, a letter of the petitioner dated 14.06.1999 and the letter written by it on 15.06.1999. The contention is that Annexure-A/6 cannot be construed to be an acknowledgement of the debt. It is not as if the Bank has put forward the plea of oral acknowledgment. Whether letter (Annexure-A/26) would tantamount to an acknowledgment or not squarely falls within the domain of construing a document. At the time of argument, this point could be argued before the Tribunal. Another reason for me not to step-in under Article 227 of the Constitution of India at this distance of time is that the Bank in its application itself and further in its affidavit dated 20.02.2002 has specifically pleaded that the petitioner had acknowledged the debt, whereas, the present application was filed after a lapse of more than three years on 16.04.2005. That circumstance also weighed with the Court not to interfere. Writ petition is, therefore, dismissed. No costs.

Sd/-
Chief Justice

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